No. 86-1634

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

JANET BUTCHER,

Petitioner,

vs.

CITY OF DETROIT, a Municipal Corporation,

Respondent.

On Petition for a Writ of Certiorari to the Michigan Court of Appeals

---

BRIEF FOR RESPONDENT CITY OF DETROIT IN OPPOSITION

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QUESTIONS PRESENTED

1. WHETHER THE CITY OF DETROIT'S ENFORCEMENT OF ITS HOUSING STANDARDS BY MEANS OF AN ORDINANCE DESIGNED TO PROMOTE AND PROTECT THE GENERAL HEALTH, SAFETY AND WELFARE OF ITS RESIDENTS THROUGH HOUSING INSPECTIONS AT POINT OF SALE MEETS CONSTITUTIONAL DUE PROCESS REQUIREMENTS.

2. WHETHER THE CITY'S ORDINANCE MEETS CONSTITUTIONAL EQUAL PROTECTION REQUIREMENTS.

3. WHETHER THE CITY'S ORDINANCE MEETS CONSTITUTIONAL SEARCH AND SEIZURE REQUIREMENTS.

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BRIEF FOR RESPONDENT CITY OF DETROIT IN OPPOSITION

The City of Detroit opposes the petition of Janet Butcher for a writ of certiorari to review the judgments of the Michigan Court of Appeals in this case.

OPINIONS BELOW

The various opinions and orders below are set forth in chronological order. The unreported June 3, 1982 order of the Circuit Court of Wayne County of the State of Michigan granting partial summary judgment, declaring defendant's ordinance invalid, and en-

joining defendant from further enforcement of said ordinance, is reprinted in the Appendix to Petitioner's Petition for a writ of certiorari starting at 19a. The Michigan Court of Appeals order of July 23, 1982, granting immediate consideration, leave to appeal and a stay of the June 3, 1982 order of the Circuit Court is set forth as Appendix A of Respondent's Brief In Opposition. The Michigan Supreme Court's order of August 30, 1982, granting Petitioner's motion for immediate consideration and denying Petitioner's application for leave to appeal the Michigan Court of Appeals' August 22, 1982 stay and grant of Respondent's application for leave to appeal is attached as Appendix B to Respondent's Brief In Opposition.

The February 6, 1984 opinion of the Michigan Court of Appeals is reported at 131 Mich. App. 698; 347 N.W.2d 702 (1984), and is reprinted in the Appendix to Petitioner's Petition starting at 1a. The Michigan Supreme Court's September 7, 1984 denial of leave to appeal is reported at 419 Mich. 917 (1984). The Michigan Supreme Court's order of April 17, 1985, denying Petitioner's motion for reconsideration is reprinted in the Appendix to Petitioner's Petition at 57a.

The November 15, 1985 bench opinion of the Circuit Court of Wayne County is reprinted in the Appendix to Petitioner's Petition starting at 23a. That court's November 22, 1985 order granting final partial summary judgment, declaring defendant's ordinance invalid, and enjoining defendant from further enforcement of said ordinance is reprinted in the Appendix to Petitioner's Petition starting at 50a. The Michigan Court of Appeals' order of December 2,

1985, granting immediate consideration, leave to appeal and a stay of the November 22, 1985 order of the Circuit Court is attached as Appendix C to Respondent's Brief In Opposition.

The Michigan Court of Appeals' decision of July 11, 1986 is reported at 156 Mich. App. 165; 401 N.W. 2d 260 (1986), and is reprinted in the Appendix to Petitioner's Petition starting at 10a. The Michigan Supreme Court's order of February 10, 1987, denying Petitioner's application for leave to appeal, is reported at 428 Mich. 861 (1987) and is reprinted in the Appendix to Petitioner's Petition at 58a.

COUNTER-STATEMENT OF THE CASE

Petitioner is a resident of Dearborn, Michigan, and owned residential property in the City of Detroit located at 17180 Faust. She attempted to sell the property on April 9, 1981, but the purchaser, on advice of counsel, refused to complete the transaction on the sole ground that the property had not been inspected by the City of Detroit under the provisions of the City ordinance requiring inspection at point of sale or transfer, and that no certificate of approval or inspection report had been issued by the City.

On April 9, 1981, Petitioner applied to the City for an inspection of the premises and paid an inspection fee of $110.00. The City's inspection occurred on April 16, 1981, and the City issued an inspection report and notice of structural deficiencies relating to the property requiring certain repairs be made as a condition of issuance of a certificate of approval. The cost of such required repairs in the inspection report was approximately $995.00. The required repairs were performed and were apparently paid for by Petitioner

after which the City issued its certificate of approval and the sale to the purchaser was completed.

Petitioner, personally arranged for the inspection by the city inspectors and stated she had to be at the house to let them in. She did not ask for a search warrant and paid her inspection fee without communicating any objection to the City. Petitioner was aware of and saw a copy of the City ordinance requiring point of sale housing inspections. The ordinance contains a provision requiring the City to obtain a search warrant if the property owner requests that one be obtained before permitting an inspection. The Michigan State Housing Law, M.C.L. Section 125.527, also contains a provision requiring the City to obtain a search warrant if the property owner requests that one be obtained in order to carry out the inspection.

Petitioner filed her action on June, 10, 1981, challenging the City of Detroit's Ordinance, No. 124-H, as amended by Ordinance No. 213-H, involving inspection of one and two family dwellings at the "point-of-sale." The ordinance is set forth in the Appendix to Petitioner's Petition at 60a-71a. The complaint alleged that it was on "behalf of herself and all persons similarly situated." The class was described as "The sellers of residential property located within the corporate limits of the City of Detroit since the adoption of City of Detroit Ordinance, No. 124-H, as amended by Ordinance No 213-H."

The complaint asked that the ordinance be declared invalid, its enforcement enjoined and that the City repay all monies collected under the ordinance to those persons who paid such amounts. Petitioner asked for an accounting of the amounts paid and that a fund be created of such payments "from which a

reasonable attorney fee shall be paid the attorney for Plaintiff."

On July 24, 1981, the City filed a motion for accelerated judgment; that motion was denied by the trial court. The City filed an answer to Petitioner's complaint on August 4, 1981. On August 19, 1981, Petitioner filed an amended complaint. Discovery in the form of Petitioner's deposition and submission of and responses to interrogatories occurred. The City filed an answer to the amended complaint on January 6, 1982.

In April, 1982, Petitioner filed a motion for certification of the class. Objections thereto were filed and heard. An order certifying the class as a "true" class under Michigan's GCR 208.1 (1), and describing the class "as all members of the class affected by the ordinance, as is more particularly set forth in the Complaint and the First Amended Complaint," was entered by the trial court on April 23, 1982. Petitioner's motion for partial summary judgment under Michigan GCR 117.2(2) was filed on May 7, 1982, along with a motion for permission to file a second amended complaint. An answer to the motion for partial summary judgment and response to Petitioner's motion to file a second amended complaint were filed on May 17, 1982. A hearing on the motion was held on May 27, 1982, and the trial court granted Petitioner's motion for partial summary judgment.

The trial court's order of June 3, 1982, granted partial summary judgment, declared the City's ordinance unconstitutional, granted Petitioner's motion that notice to the members of the class be made at the City's expense, and permanently enjoined further

enforcement of the ordinance. The City's request for a stay pending interlocutory appeal was denied.

The City then sought and the Michigan Court of Appeals granted a stay of the trial court's order, referencing the decision in *People v. Sell*, 310 Mich. 305, 315-316 (1945). Petitioner sought leave to appeal that stay to the Michigan Supreme Court and moved for immediate consideration. On August 30, 1982, the motion for immediate consideration was granted and leave to appeal considered and denied by the Michigan Supreme Court, "because the Court was not persuaded that the question presented should be reviewed by this Court."

The Michigan Court of Appeals issued its decision on February 6, 1984, *Butcher v. Detroit*, 131 Mich. App. 698; 347 N.W.2d 702 (1984), reversing the trial court's order and remanding the case. That court found that the City had the power to enact the ordinance and that the ordinance does not constitute an unconstitutional taking of property without due process of law, holding, at 704, that the City has:

> the power to require an inspection before a home owner may sell his one or two-family residence. Such an inspection deters fraud and helps enforce the city's building code. Both the means and goal are validly within defendant's police power.

The Court of Appeals also rejected Petitioner's arguments that the City's ordinance conflicted with the State Housing Law, pointing out, at 705, that:

> The city may continue to enforce state-mandated requirements by other, more standard means. The particular inspection method

> challenged here is aimed at the specific practice of fraudulent conveyance of homes with serious structural and other deficiencies. This supplemental form of housing regulation is not expressly forbidden by statute. Such fraudulent transactions pose an obvious threat to the health and welfare of defendant's citizens, and an ordinance directed against them is within the authority of the City of Detroit.

The decision also rejected Petitioner's argument that the City was without authority to collect its inspection fee, referencing Michigan statutes, MCL Section 438.31a which expressly authorizes it: "A charge for inspection required by a local unit of government shall be paid by the seller and shall not be charged to the borrower."

In holding that the ordinance does not amount to an unconstitutional taking of property without due process, the court stated, at 707:

> In the present case, the ordinance neither destroys nor reduces the property's value. In fact, if anything, by requiring post-inspection repairs, it enhances value. Rather than preventing the owner from enjoying his or her property, it merely imposes an inspection and a fee. Such a burden on the property holder is light. The inhibition is not on the transfer of property but upon the failure to have the home inspected.
>
> On the other hand, the ordinance ensures that one and two-family dwellings meet certain minimum requirements. The ordinance is

> defendant's way of ensuring that a seller has more recourse on buying a house less valuable than anticipated than merely stoically accepting the saw '*caveat emptor*'. Moreover, the statute helps combat housing deterioration.

In a footnote, n. 4, the Court of Appeals declined to go beyond the grounds ruled on by the trial court's order, saying, "Although the parties, particularly plaintiff, have addressed other reasons why the ordinance is (or why it is not) invalid, we will address only the grounds ruled on by the trial court."

Petitioner's application for leave to appeal to the Michigan Supreme Court on February 22, 1984, was denied on September 7, 1984, the Court stating it "is not persuaded that the questions presented should now be reviewed by this Court." Petitioner's September 17, 1984 motion for reconsideration was denied on April 17, 1985, the Court stating: "it does not appear that the order was entered erroneously. On remand, the trial court must still consider the remaining challenges of the plaintiff to the ordinance."

After remand, on July 12, 1985, Petitioner filed a motion for summary disposition with the trial court. Petitioner's motion for summary disposition was on the grounds specified in Michigan Court Rules (MCR) 2.116(C)(9) which provides that "The opposing party has failed to state a valid defense to the claim asserted against him or her." Under MCR 2.116 (G)(5), "Only the pleadings may be considered when the motion is based on subrule (C) (8) or (9)." The matter was heard without submission of any evidence; under these MCR provisions, only those matters contained in the pleadings were before the trial court.

On November 15, 1985, the trial court issued its bench opinion granting Petitioner's motion for summary disposition, again stating it found the ordinance constituted a taking of property without due process and violated plaintiff's Fourth Amendment and equal protection rights. The trial court entered an order granting final partial summary judgment on November 22, 1985.

On that same day, November 22, 1985, the City filed a motion for stay of proceedings, a motion for immediate consideration, and a motion for peremptory reversal. On December 2, 1985, the Michigan Court of Appeals granted the motion for stay of proceedings and the motion for immediate consideration, and denied the motion for peremptory reversal.

The Michigan Court of Appeals issued its opinion on July 11, 1986, *Butcher v. Detroit*, 156 Mich. App. 165; 401 N.W.2d 260 (1986). The opinion noted that the trial judge again erred in finding that the City's ordinance constitutes a taking of property without due process of law, and that upon remand he could not properly base his grant of summary judgment to plaintiff on this rejected claim. The Court of Appeals also concluded, at 263:

> that the trial judge erred in finding that plaintiff, prior to presenting any proofs in this matter, had overcome the presumption of the ordinance's validity and had met the burden of showing that the ordinance was without reasonable justification. In fact, we find that there is no genuine issue of material fact that the classification in the ordinance are rationally related to a legitimate govern-

> ment interest and further find that plaintiff could not possibly overcome the presumption of the ordinance's constitutional validity at trial. Therefore, we conclude that defendant city is entitled to judgment as a matter of law on plaintiff's equal protection claim.

In rejecting the trial court's finding that the ordinance authorized an unreasonable search, the court, at 263-264, held

> Plaintiff, in the trial court, based her Fourth Amendment argument on cases which, pursuant to *Camara v. Municipal Court*, invalidated building inspection ordinances that did not allow a property owner to demand a search warrant prior to the inspection. However, the ordinance in this case does provide that the inspector is required to advise the owner that he or she has the right to refuse entry to an inspector who does not have a search warrant. Ordinances that provide that a warrant is required upon an owner's refusal to consent to an inspection have been consistently upheld as constitutional. (Footnotes omitted.)

The court further pointed out that where there is a warrant requirement provided for in the ordinance, the property owner is not forced "to choose between consenting to a warrantless search or subjecting himself or herself to substantial fines" since if the property owner refuses to consent to the inspection, the city must procure a warrant in order to gain access to the property. The court also pointed out, at 264, that these inspections:

> occur just prior to sale when the structures are vacant and the owner's expectations of privacy are relatively low. In addition, the housing inspector has no discretion regarding which structures are to be searched. An inspection under the ordinance only occurs when the owner-seller requests one. The inspection is restricted to the published guidelines required by the ordinance. Thus, both the scope and timing of the inspection are known by the owner in advance. Furthermore, the inspection has no connection with a criminal investigation. The presence of violations has no punitive consequences for the landlord.

The court concluded that the trial judge erred in finding that the City's ordinance authorized unreasonable searches in violation of the federal and state constitutions and that the City was also entitled to judgment as a matter of law on this issue and dismissal of Petitioner's claim.

The Michigan Supreme Court on February 10, 1987 denied Petitioner's application for leave to appeal.

ARGUMENT

1. This Case Involves No Important Question Of Federal Constitutional Law Which Has Not Been But Should Be Decided By This Court.

a. The Courts Below Fully Considered and Correctly Decided The Federal Issues.

This litigation has already involved extensive state appellate court consideration of Petitioner's legally untenable claim that the ordinance of the City of

Detroit requiring inspections of one and two-family dwellings at point of sale is constitutionally infirm. In this case, Petitioner has unsuccessfully presented arguments in seven state appellate proceedings that Detroit's ordinance is beyond the authority delegated to the City under its police powers and that the ordinance violates constitutional due process, equal protection and search and seizure requirements.

Respondent submits that the opinions issued by the two panels of the Michigan Court of Appeals are clearly correct, are consistent with decisions of this Court, are based on well-settled principles of law, and are justified in their recognition of and support for important considerations of legislatively-determined local government policy. While Petitioner has clearly been persistent in the face of these adverse appellate determinations, further review of Petitioner's arguments by this Court is not justified on the basis of the federal issues raised or in the face of the thorough review provided Petitioner's contentions by the Michigan appellate courts.

Petitioner has asserted four "questions for review" by this Court. These questions appear to boil down essentially to three contentions:

(1) whether the City of Detroit's enforcement of its housing standards by means of an ordinance designed to promote and protect the general health, safety and welfare of its residents through housing inspections at point of sale constitutes a taking in violation of due process requirements;

(2) whether the City's ordinance meets constitutional equal protection requirements; and,

(3) whether the City's ordinance violates constitutional search and seizure protections.

The scatter-gun attack upon the City's ordinance mounted by Petitioner below also included a number of state law related claims that clearly are inappropriate for review by this Court, although those same arguments are liberally interspersed among the constitutional arguments Petitioner now raises. This Argument will focus solely on the established authority for the City's enactment of the ordinance under its police powers and the lack of necessity for review of the federal constitutional issues Petitioner asserts.

b. The Facial Nature Of Petitioner's Challenge To The Ordinance And Lack Of Factual Record Below Constitute An Insubstantial Basis For This Court's Review.

At the outset it should be recognized that this Petition does not present a factual record in support of Petitioner's challenge to the City's ordinance. That Petitioner's contentions are based solely on a facial attack on the City of Detroit's ordinance suggests the lack of significance to the federal issues raised and the inappropriateness of this case as a vehicle to review the contentions presented.

The posture of the proceedings below as noted in the Counter-Statement of the Case is that under MCR 2.116 (G)(5), Petitioner's summary disposition motion means "[o]nly the pleadings may be considered when the motion is based on subrule (C) (8) or (9)." The matter was heard without submission of any evidence; under these MCR provisions, only those matters contained in the pleadings were before the trial court.

This lack of a factual foundation has significance for each of the federal issues that Petitioner contends

merit review. Cf., *Socialist Labor Party v. Gilligan*, 406 U.S. 583, 586-587 (1972). Thus, on the taking issue, the trial court stated it was holding the "ordinance invalid on its face." (Record, hearing of May 26, 1982, at 35; Record, hearing of June 3, 1982, at 4.) Given the fact that the trial court failed to recite what parts of the record, if any, were relied on in reaching its decision, that it failed to make a single factual finding, and that it failed to provide any explanation of the legal rationale for its partial summary judgment decision, no other basis was before the Michigan courts, or could be before this Court.

The Michigan Court of Appeals, in rejecting Petitioner's argument that the ordinance was an unconstitutional taking, recognized that the "inhibition is not on the transfer of property but upon the failure to have the home inspected." 131 Mich. App. at 707. However, Petitioner did have the dwelling inspected and did transfer the property to the purchaser. That an expenditure of funds ($995) was required to bring the unit up to code requirements cannot seriously be considered a "taking," nor can an inspection fee ($110.00), found reasonable by the Michigan courts, be seriously considered sufficient to constitute a "taking."

Nor does Petitioner have factual grounds on which to challenge the ordinance on an equal protection basis. Petitioner clearly does not come within an excepted category under the ordinance; Petitioner's sale was to a purchaser for occupancy. Moreover, that the ordinance applies in a City with significant home ownership, to 350,000 of the 360,000 dwellings in the City (in 1969), does not suggest that application of the ordinance to one and two-family units somehow

raises equal protection issues. The remainder of the stock, multi-family units, are covered by other inspection provisions, so there is no unreasonable gap in coverage. Moreover, given the presumption of constitutionality accorded legislative judgments in the area of economic regulation, *Dandridge v. Williams*, 397 U.S. 471, 485 (1970), Petitioner, prior to presenting any proof, simply cannot meet the burden of showing lack of rationality in the legislative judgment.

Finally, as to Petitioner's challenge on search and seizure grounds, factually, there is no question but that an appointment was made for the inspection and that she was there and let the inspector in for the inspection. No request was made for a search warrant. She was aware of the ordinance and had seen a copy of it.

Thus, that which is presented to this Court is simply a facial challenge to the ordinance without any factual support for Petitioner's contentions. This is not an appropriate record to consider the federal issues raised even if they were of a stature that needed settling. As shown below, moreover, the allegedly conflicting court decisions cited by Petitioner are simply inapplicable in these circumstances.

c. The Decisions of the Michigan Court of Appeals Are Not In Conflict With Applicable Decisions of This Court, of any State Court of Last Resort or Federal Court of Appeals.

All the cases cited by Petitioner on which allegations of failure to follow federal law are based are decisions concerned with Fourth Amendment violations. As noted above, no factual basis is presented by Petitioner either for the due process, equal protection or search and seizure challenges raised to the

City's ordinance. No cases are referenced reflecting any conflict on due process or equal protection with the two decisions of the Michigan Court of Appeals on those issues. Those decisions are clearly correct and no contrary law is cited by Petitioner. Not only has Petitioner failed to submit evidence of any lack of a rational relationship for the powers exercised by and the classifications set forth in the City's ordinance, the decisions of the courts below provide well documented justifications for the ordinance both on due process and equal protection grounds.

While Petitioner relies for much of the argument presented on all constitutional issues, and especially regarding the alleged search and seizure violations, on this Court's decisions in *Camara v. Municipal Court*, 387 U.S. 523 (1967) and *See v. Seattle*, 387 U.S. 541 (1967), neither of those cases is applicable in these circumstances. That is so because under the City's ordinance, if the home owner requests one, the City must obtain a search warrant prior to making the inspection. It is not disputed that Petitioner did not refuse to permit an inspection, but, actually made an appointment for the inspection. Since Petitioner never actually occupied the premises involved, even in the absence of a warrant provision, she and her class of non-occupant owners would hardly have an expectancy of privacy superior to that of the plaintiff in *Frey v. Panza*, 621 F.2d 596 (3rd Cir. 1980) who constructed residential housing for sale and whose objection to a warrantless inspection was rejected.

Petitioner's basic contention is that the City's ordinance violates constitutional search and seizure limitations because it forces an owner who wishes to sell his property to confront a dilemna: "either he must

consent to a warrantless search or face the possibility of a criminal penalty." However, the home owner in Detroit is not faced with such limited options. Detroit's ordinance, in contrast with those cases which have found search and seizure violations in situations involving administrative searches, contains a provision for a warrant (Ord. No. 213-H, Section 12-7-4), as does the State of Michigan's Housing Law (MCL Section 125.527). Thus, if the owner chooses not to accept an inspection without a warrant, he is authorized to inform the City that he will not submit to an inspection unless the City obtains a warrant, an option described in the ordinance itself, and the City must proceed to obtain a warrant prior to inspecting the dwelling unit.

Contrary to Petitioner's assertions, sanctions would apply only *after* one sold a unit *and* failed to receive a certificate of approval from the City that the unit meets code standards. The certificate is available after an inspection report from the City shows no violations or, if deficiencies are found, after either the repairs are completed or a waiver is obtained from the purchaser. Sanctions, thus, are for failing to obtain a certificate of approval. While an inspection is required as a practical matter to demonstrate adherence to housing codes, the responsibility for showing compliance with applicable codes is reasonably placed on the owner to take action to get the unit inspected. In any event, the home owner is still entitled to require that the City first obtain a warrant before allowing the inspection.

In *Dome Realty, Inc. v. Paterson*, 83 N.J. 212 (1980), the court characterized a warrant in such circumstances as "superfluous." A similar determination oc-

curred in *Louisville Board of Realtors v. City of Louisville*, 634 S.W. 2d 163 (Ky. App. 1982). In *Dome*, the court pointed out that Paterson's ordinance leaves the housing inspector with essentially "no discretion regarding which dwellings are to be searched." The court notes, at 240-241:

> Under the ordinance an inspection occurs only when the landlord requests one. It is restricted to a determination of compliance with each of the several standards contained in the housing code. Both the scope and the timing of an inspection are known by the landlord in advance. The inspection process itself provides the 'visible manifestations of the field officers' authority' which makes the assurances of a warrant unnecessary.

Similarly, the subject of the inspection is clear with the Detroit ordinance; the items to be inspected are specified in the applicable City housing code provision. There is no administrative discretion that needs to be subject to review as to why the inspection is to be performed on this particular dwelling or as to the scope of the inspection itself. Both are mandated in advance. While the significance of the magistrate's review is lessened under these circumstances, nevertheless, if requested to do so, under its own ordinance the City of Detroit must first obtain a warrant before making an inspection.

Petitioner's contention that a warrant must be obtained in every inspection to pass muster under constitutional search and seizure requirements is simply without foundation. As pointed out in *Sokolov v. Village of Freeport*, 52 N.Y. 2d 341, at 348 (1981), a

case in which no warrant provision was contained in the ordinance, "As observed in *Camara*, most citizens will allow inspections of their property without a warrant." *See, Camara*, 387 U.S. at 539-540. Neither this Court's decision in *Camara* nor in *See* is in conflict with the Michigan Court of Appeals' decisions below. Petitioner's contentions are simply inapt in these circumstances. In the context of Detroit's ordinance, and under Michigan statutes, it is sufficient that the home owner can require that the City first obtain a warrant before undertaking an inspection.

Petitioner's challenge, in the last analysis, is not whether the City's ordinance contains a warrant provision, but whether the City has power to enact the ordinance in the first place. That issue, Respondent contends, was thoroughly examined and solidly established under Michigan law by the decisions below.

2. The City of Detroit Was Fully Authorized To Enact Its Ordinance Requiring Housing Inspections At Point of Sale As A Matter Of State Law And For The City To Impose A Housing Inspection At That Time Is Fully Reasonable.

The City of Detroit is fully authorized to enact its point of sale housing inspection ordinance under state law. That law and the legislative justifications for the City's ordinance provide the foundation upon which Petitioner's challenges must be assessed. The Michigan Court of Appeals in its first opinion, 131 Mich. App. 698 (1984), stated at 701, that "First, we believe the defendant does have the power to enact such an ordinance."

In sustaining the authority of the City, the court relied on the decision of the Michigan Supreme Court in *People v. Sell*, 310 Mich. 305 (1945). That decision,

along with *Cady v. Detroit*, 289 Mich. 499 (1939), clearly reflect at least 40 years of consistent jurisprudence in Michigan upholding the police powers of home rule chartered cities, such as Detroit, both under the Michigan Constitutions of 1908 and 1963 and the Michigan Home Rule Act (e.g. MCL 117.3j), to enact ordinances such as that for which review is requested here. As stated in *Sell*, at 315,

> [E]xcept as limited by the Constitution or by statute, the police power of Detroit as a home rule city is of the same general scope and nature as that of the State.

In *Cady*, the Michigan Supreme Court pointed out:

> Ordinances having [for] their purpose regulated municipal development, the security of home life, the preservation of a favorable environment in which to rear children, the protection of morals and health, the safeguarding of the economic structure upon which the public depends, *the stabilization of the use and value of property*, the attraction of a desirable citizenship and fostering its permanency are within the proper ambit of the police power. Changes in such regulations must be sought through the ballot or the legislative branch. (Emphasis added.)

The Michigan Constitution, Art. VII, Section 22, and the State's Home Rule Act, along with the Charter of the City of Detroit (See, Secs. 7-404; 9-301), clearly authorize the ordinance's enactment. Detroit's ordinance requiring housing inspections at point of sale came into existence in 1974, as indicated in the initial version of the ordinance itself, because:

> A substantial number of substandard dwellings had been sold in the City of Detroit, often by fraudulent means . . . and do not meet even minimum standards of habitability and livability . . . [t]he danger to the health and safety of the people of the city of Detroit will assume crisis proportions. . . . The citizens of Detroit urgently need protection from sales and resales of such property without full disclosure of such deficiencies in habitability and without assurance that the dwelling will be repaired so as to meet minimum standards of health, safety and habitability. Ord. No. 9-H, Ch. 12, Art VII, Code of the City of Detroit (1974), that was succeeded by the current Ord. 124-H, sec. 12-7-1, *et seq.* as amended by 213-H (1977).

Thus, Detroit's ordinance was designed to detect deficiencies in housing conditions, encourage improvement and repair of the City's housing stock, and prevent what was and would continue to be without this ordinance, the widespread fraud in purchases of one and two-family dwellings. As the Michigan Court of Appeals' decision noted, at 704, "Such an inspection deters fraud and helps enforce the city's building code. Both the means and goal are validly within defendant's police power."

The reasonableness of the legislative basis for Detroit's ordinance is palpable. The legislative judgment of the City of Detroit to require housing inspections in this manner is fully justified given Detroit's history of so much fraud in sales of one and two-family units, the City's history of housing abandonment, and the deterioration of its aging housing stock.

CONCLUSION

Petitioner's contentions do not justify the grant of a writ of certiorari under the standards established by Rule 17 of the Rules of this Court. The Petition should be denied.

Respectfully submitted,

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May 11, 1987

APPENDIX

APPENDIX A

AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN, Held at the Court of Appeals in the City of Lansing, on the 23rd day of July in the year of our Lord one thousand nine hundred and eighty-two.

Present the Honorable

Robert J. Danhof, C.J.
President Judge

William R. Beasley
Walter P. Cynar
Judges

Docket No. 64900
D.C. No. 81-122-948-CZ

JANET BUTCHER,
Plaintiff-Appellee,

v.

CITY OF DETROIT, a municipal corporation,
Defendant-Appellant.

In this cause an application for leave to appeal and motions for immediate consideration and stay of proceedings below are filed by defendant-appellant, and an answer in opposition thereto having been filed, and a motion to file brief amici curiae having also been filed, and due consideration thereof having been had by the Court,

IT IT ORDERED that the motion for immediate consideration be, and the same is hereby GRANTED.

IT IS FURTHER ORDERED that the application for leave to appeal be, and the same is hereby GRANTED on

condition that all acts required by subrules 803.2 and 803.5 be performed within 20 days after the date of the Clerk's certification of this order.

IT IS FURTHER ORDERED, pursuant to GCR 1963, 820.7(1) that the order of the Circuit Court for the County of Wayne dated June 3, 1982, be, and the same is hereby STAYED. *People v. Sell*, 310 Mich 305, 315-316; 17 NW2d 193 (1945).

IT IS FURTHER ORDERED that the motion to file brief amici curiae be, and the same is hereby GRANTED.

IT IS FURTHER ORDERED that the motion to dismiss be, and the same is hereby DENIED.

STATE OF MICHIGAN--ss.

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause, that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court of Appeals at Lansing, this 26th day of July in the year of our Lord one thousand nine hundred and eighty-two.

/s/RONALD L. DZIERBICKI
Clerk

APPENDIX B

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the City of Lansing, on the 30th day of August in the year of our Lord one thousand nine hundred and eighty two.

Present the Honorable

MARY S. COLEMAN
Chief Justice

THOMAS GILES KAVANAGH,
G. MENNEN WILLIAMS,
CHARLES L. LEVIN,
JOHN W. FITZGERALD,
JAMES L. RYAN,
BLAIR MOODY, JR.,
Associate Justices

SC: 69900
COA: 64900
LC: 81-122948

6900
(14) (15)

JANET BUTCHER,
Plaintiff-Appellant,

v.

CITY OF DETROIT, a municipal corporation,
Defendant-Appellee.

On order of the Court, the motion for immediate consideration is considered, and it is GRANTED.

The application for leave to appeal is considered, and it is DENIED, because the Court is not persuaded that the questions presented should be reviewed by this Court.

STATE OF MICHIGAN--ss.

I, Harold Hoag, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 30th day of August in the year of our Lord one thousand nine hundred and eighty two.

/s/CORBIN R. DAVIS Clerk.
Deputy

APPENDIX C

AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN, Held at the Court of Appeals in the City of Detroit, on the 2nd day of December in the year of our Lord one thousand nine hundred and eighty-five.

Present the Honorable
MICHAEL J. KELLEY

Presiding Judge
HAROLD HOOD
JOHN H. SHEPHERD
Judges

NO. 88909
L.C. NO. 81-122-948-CZ

JANET BUTCHER,
Plaintiff-Appellee,

v.

THE CITY OF DETROIT, a Michigan municipal corporation,
Defendant-Appellant.

In this cause a motion for stay together with a motion for peremptory reversal and a motion for immediate consideration thereon is filed by defendant-appellant, and an answer in opposition to said motions having been filed, and due consideration thereof having been had by the Court,

IT IS ORDERED that the motion for immediate consideration be, and the same is hereby GRANTED.

IT IS FURTHER ORDERED that the motion for stay of proceedings be, and the same is hereby GRANTED until the further order of this Court.

IT IS FURTHER ORDERED that the motion for peremptory reversal be, and the same is hereby DENIED.

STATE OF MICHIGAN--ss.

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court of Appeals at Lansing, this 4th day of December in the year of our Lord one thousand nine hundred and eighty five.

/s/ RONALD L. DZIERBICKI
Chief Clerk